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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

AMERICA CHUNG NAM, LLC,

Plaintiff,

v.

MITSUI O.S.K. LINES, LTD., MOL
(AMERICAS), LLC, and MOL
DRYBULK, LTD.,

Defendants.

Case No. 2:23-cv-07676-SB-JPR

Hon. Stanley Blumenfeld, Jr.

**PLAINTIFF AMERICA CHUNG
NAM, LLC's REPLY IN FURTHER
SUPPORT OF MOTION TO
REMAND**

Hearing:

Date: December 1, 2023

Time: 8:30 a.m.

Place: Courtroom 6C

350 W. First Street

Los Angeles, CA 90012

Judge: Stanley Blumenfeld, Jr.

Action Filed: August 14, 2023

Removed: September 14, 2023

Trial Date: None Set

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I. INTRODUCTION

Defendants' Remand Opposition¹ simply confirms that their removal of ACN's state court action is improper and that remand is warranted because: (1) this Court does not have either removal or subject matter jurisdiction over ACN's state court action pursuant to the Federal Arbitration Act ("FAA"); (2) this Court does not have admiralty jurisdiction pursuant to 28 U.S.C. § 1333(1); (3) this Court does not have diversity jurisdiction pursuant to 28 U.S.C. § 1332(a); and (4) this action meets all of the factors that weigh in favor of dismissal on *Younger* abstention grounds. Each of Defendants' efforts to argue otherwise is foreclosed by binding legal precedent that Defendants make little effort to address, let alone meaningfully rebut.

First, Defendants continue to misread the legal standard for removal and subject matter jurisdiction under sections 205 and 203 of the FAA and they completely ignore the parties' superseding dispute resolution provisions that do not include arbitration. Courts routinely hold that when the existence of an arbitration agreement is at issue, as is the case here, then the Court must first look to state law principles to determine whether such an agreement exists in the first instance. Applying those state law principles here leads to the conclusion that there is no binding arbitration agreement between the Charter Parties,² and therefore the FAA cannot apply to confer any type of jurisdiction over this action.

¹ "Remand Opposition" refers to Defendants' Opposition to Motion to Remand by Plaintiff America Chung Nam, LLC, filed November 7, 2023; "Remand Motion" refers to the Notice of Motion And Motion to Remand By Plaintiff America Chung Nam, LLC, filed on October 24, 2023; "Arbitration Opposition" refers to Plaintiff's Opposition to Defendants' Motion to Dismiss or, in the Alternative, to Stay and Compel Arbitration, filed October 24, 2023; and "Arbitration Reply" refers to Defendants' Reply in Further Support of Motion to Dismiss First FAC or, in the Alternative, to Stay and Compel Arbitration, dated November 7, 2023.

² "Charter Parties" refers to the signatories to the Charter Agreements; "Charter Agreements" refers to, collectively, the contracts executed by the Charter Parties on July 21, 2021 and April 1, 2022, *see* Declaration of Kenichi Ikehashi, dated October 6, 2023, ("Ikehashi Decl.") at Exs. A and B; "Addenda" refers, collectively, to Addendum No. 11 to the July 21, 2021 Charter Agreement, and Addendum No. 6 to the April 1, 2022 Charter Agreement, *see* Ikehashi Decl. at Ex. A at 39; *id.* at Ex. B at 27.

Second, Defendants’ attempt at establishing admiralty jurisdiction relies entirely on outdated or non-precedential case law. Those cases do not abrogate the legal standard set forth in *Grubart v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 534 (1995) that admiralty jurisdiction applies only where an action meets *both* the “location test” and the “connection test” enumerated therein. This case satisfies neither requirement.

Third, Defendants’ Remand Opposition largely repeats the same conclusory arguments that it made in its Removal Petition regarding diversity jurisdiction. Those arguments do not satisfy Defendants’ burden of proving “by a preponderance of the evidence,” that the amount in controversy in ACN’s state court action exceeds the \$75,000 threshold requirement of 28 U.S.C. 1332(a). And at any rate, ACN should be granted leave to permissively join its Hong Kong affiliate as a plaintiff in this action, which would render moot Defendants’ diversity jurisdiction claims.

Finally, Defendants' efforts to defeat application of the *Younger* abstention doctrine ignores both the underlying legal standard and the relevant case law. This case satisfies each of the factors that weigh in favor of dismissal on *Younger* abstention grounds.

II. ARGUMENT

A. The Addenda to the Charter Agreements Render the FAA Inapplicable to This Proceeding.

As set forth in ACN’s Remand Motion and in its Arbitration Opposition, Defendants’ argument for removal pursuant to the FAA is fatally flawed because, among other reasons, the parties deliberately removed the Charter Agreements’ arbitration provisions through Addenda that the parties executed in November and December of 2022. That renders the FAA inapplicable to this proceeding because there is no binding arbitration agreement that can serve as the basis for any jurisdiction under the FAA—whether removal jurisdiction under section 205, or subject matter jurisdiction under section 203—or a motion to compel arbitration. *See* Remand

1 Motion at 6; Arbitration Opposition at 5-8. Defendants’ Remand Opposition does
2 nothing to remedy that fatal deficiency.

3 **1. This Court Must, as a Threshold Matter, Determine Whether**
4 **An Arbitration Agreement Exists Under State Law.**

5 Defendants first argue that this Court can, and should, simply ignore the
6 Addenda altogether because “Section 205 [of the FAA] does not include any
7 requirement that, as a prerequisite for removal, the removing party establish that the
8 arbitration agreement is valid and enforceable.” *See* Remand Opposition at 10-11
9 (quoting *Miller v. Tri Marine Fish Co.*, 2016 WL 3545523, at *5 (C.D. Cal. 2016) and
10 *Sunvalley Solar, Inc. v. CEEG (Shanghai) Solar*, 2015 WL 5471434, at *2 (C.D. Cal.
11 Sept. 18, 2015)). That argument misstates the applicable legal standard, and is
12 foreclosed by well-established case law and the text of the FAA itself.

13 As the Supreme Court has repeatedly emphasized, the “first principle” of
14 arbitration is that “[a]rbitration is strictly a matter of consent and thus is a way to
15 resolve those disputes—*but only those disputes*—that the parties have agreed to submit
16 to arbitration.” *Goldman, Sachs & Co. v. City of Reno*, 747 F.3d 733, 741-42 (9th Cir.
17 2014) (emphasis in original) (quoting *Granite Rock Co. v. Int’l Bhd. of Teamsters*, 561
18 U.S. 287, 299 (2010)); *AT&T Techs., Inc. v. Commc’ns Workers of Am.*, 475 U.S. 643,
19 649 (1986); *Volt Info. Scis., Inc. v. Bd. of Trs. of Leland Stanford Junior Univ.*, 489
20 U.S. 468, 478 (1989). Therefore, “[w]here the arbitrability of a dispute is contested, [a
21 court] must decide,” as an initial matter, “whether the parties are contesting the
22 *existence* or the *scope* of an arbitration agreement.” *Id.* (emphasis in original). When
23 a dispute concerns the *existence*, rather than *scope*, of an arbitration agreement, then
24 the Court must “apply state-law principles of contract formation and interpretation”—
25 *and not the provisions of the FAA*—to determine whether an arbitration agreement
26 even exists in the first instance. *Suski v. Coinbase, Inc.*, 55 F.4th 1227, 1230 (9th Cir.
27 2022); *Lowden v. T-Mobile USA, Inc.*, 512 F.3d 1213, 1217 (9th Cir. 2008); *First*
28 *Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 944 (1995); *Johnson v. Walmart*

1 *Inc.*, 57 F.4th 677, 681 (9th Cir. 2023); *Goldman, Sachs & Co.*, 747 F.3d at 741-42.
2 “[T]he FAA . . . does not require the parties to arbitrate when they have not agreed to
3 do so.” *Volt*, 489 U.S. at 478.

4 These fundamental precepts are reflected in the text of the FAA itself. Sections
5 203 and 205 of the FAA plainly require, at a bare minimum, the existence of an
6 arbitration agreement or award falling under the Convention in order for those
7 provisions to confer either removal or subject matter jurisdiction over an action. *See* 9
8 U.S.C. §§ 202, 203, 205.

9 Applying these black-letter principles here, the question of whether ACN
10 disputes the *existence* or, on the other hand, the *scope* of an arbitration agreement is a
11 threshold question that this Court must address *before* determining whether section
12 205—or any provision of the FAA—applies to this proceeding. That question is
13 readily answered by ACN’s Arbitration Opposition and Remand Motion. In both,
14 ACN clearly states that it disputes the *existence* of any enforceable arbitration
15 agreement between the Charter Parties. *See* Remand Motion at 6; Arbitration
16 Opposition at 5-8. In particular, ACN argues that the Addenda superseded the Charter
17 Agreements’ arbitration provisions because the Addenda created a new mechanism by
18 which the Charter Parties were to resolve any disputes arising from the Charter
19 Agreements. *See* Arbitration Opposition at 5-8. Instead of arbitration, the Charter
20 Parties were now required to resolve their disputes through mutual “good faith
21 consultation.” *See* Ikehasi Decl., Ex. A at 39 (Addendum No. 11 to the 2021 Charter
22 Party, dated November 25, 2022); *id.*, Ex. B at 27 (Addendum No. 6 to the 2022
23 Charter Party, dated December 19, 2022). Accordingly, the applicable legal standard
24 that this Court must apply, in the first instance, are “state-law principles of contract
25 formation and interpretation”—and not section 205 of the FAA, as Defendants
26 contend—to determine whether the arbitration provisions survived the Addenda.
27 *Suski*, 55 F.4th at 1230; *Lowden*, 512 F.3d at 1217.

Neither of the two cases that Defendants rely upon—*Miller* and *Sunvalley*—call for a different conclusion because the parties there did not question the existence of the arbitration agreements at issue. *See Miller*, 2016 WL 3545523, at *5; *Sunvalley*, 2015 WL 5471434, at *2.

2. The FAA Does Not Apply Because There Is No Binding Arbitration Agreement Between the Charter Parties.

“As the party seeking to compel arbitration, [Defendants] bear[] the burden of proving the existence of an agreement to arbitration by a preponderance of the evidence.” *Johnson*, 57 F4th at 681. Defendants have not—and cannot—meet that burden.

Defendants claim that the Addenda did not supersede the Charter Agreements’ arbitration provisions because the Addenda “make no mention of ‘arbitration’ and do not otherwise contain language that ‘clearly and specifically’ waves arbitration.” Arbitration Reply at 2-3. But that assertion simply confirms that the opposite is true—the new dispute provisions address the same subject matter and include nothing about arbitration. Therefore, they are inconsistent with and thereby eradicate the earlier arbitration provisions. Under California law, “[t]he general rule is that when parties enter into a second contract dealing with the same subject matter as their first contract without stating whether the second contract operates to discharge or substitute for the first contract,” then “the two contracts must be interpreted together and the latter contract prevails to the extent they are inconsistent.” *Suski*, 55 F.4th at 1230-31 (citation omitted) (applying California law); *see also Williams v. Atria Las Posas*, 24 Cal.App.5th 1048 (Ct. App. 2018) (holding that later-signed arbitration agreement superseded parties’ original agreement, which did not include an arbitration clause); *Masterson v. Sine*, 68 Cal.2d 222 (1968) (any “collateral agreement itself must be examined . . . to determine whether the parties intended the subjects of negotiation it deals with to be included in, excluded from, or otherwise affected by the writing”).

1 That general rule squarely applies to preclude Defendants’ argument.
2 Defendants cannot dispute that the Addenda concern “the same subject matter” as the
3 Charter Agreements—namely, ACN’s use of Defendants’ wood chip vessels. *Suski*,
4 55 F.4th at 1230-31. By noting that the Addenda does not specifically discuss the
5 arbitration provisions, Defendants essentially concede that the Addenda do not “stat[e]
6 whether [they] operate[] to discharge or substitute” the arbitration provisions. *Id.*
7 Therefore, “the two contracts must be interpreted together and the latter contract”—
8 here, the Addenda—“prevails” because it is “inconsistent with” the arbitration
9 provisions. *Id.*

10 In short, the new dispute provisions of the Addenda supersede the Charter
11 Agreements’ arbitration provisions. Therefore, there is no binding arbitration
12 agreement that can serve as the basis for jurisdiction or a motion to compel arbitration
13 under the FAA.

14 **B. Even if an Arbitration Agreement Exists, This Court Still Would Not**
15 **Have Jurisdiction Under Either Sections 205 or 203 of the FAA.**

16 Even if an arbitration agreement did, in fact, exist to bind the Charter Parties,
17 this Court still lacks both removal and subject matter jurisdiction over ACN’s state
18 court proceeding under sections 205 and 203 of the FAA.

19 Section 205 confers federal district courts with removal jurisdiction over a state
20 court action or proceeding whose “subject matter . . . relates to an arbitration
21 agreement or award falling under the [New York Convention on the Recognition and
22 Enforcement of Foreign Arbitral Awards (“Convention”)].” 9 U.S.C. § 205.
23 Defendants argue that for purposes of section 205, an action or proceeding “relates to”
24 an arbitration provision if it is “at least conceivable that the arbitration clause will
25 impact the disposition of the case.” Remand Opposition at 5 (quoting *Infuturia Glob.*
26 *Ltd. v. Sequus Pharms., Inc.*, 631 F.3d 1133, 1138, fn. 5 (9th Cir. 2011)). Even if that
27 were the proper legal standard, the arbitration provisions in the Charter Agreements do
28 not impact the disposition of the ACN’s state court action. *See* Arbitration Opposition

1 at 13. ACN’s First Amended Complaint (“FAC”) asserts causes of action solely based
2 on Defendants’ violations of California’s unfair competition laws. Those claims seek
3 public injunctive relief as a remedy. They do not require this Court to interpret or
4 construe any terms in the Charter Agreements. *See Jackson v. Amazon.com*, 65 F.4th
5 1093, 1102 (9th Cir. 2023) (arbitration provisions covering “any dispute” “arising out
6 of or relating in any way” to a contract nevertheless do not require arbitration of claims
7 that do not depend on the interpretation or performance of that contract). Furthermore,
8 ACN’s state court action includes MOL (Americas), LLC as a Defendant. That
9 entity—which is not a party to the Charter Agreements—would be unaffected by any
10 arbitration decision or award. *See Comedy Club, Inc. v. Improv W. Assocs.*, 553 F.3d
11 1277, 1287 (9th Cir. 2009) (any presumption in favor of arbitration does not extend to
12 those who are not parties to an arbitration agreement.) In light of these considerations,
13 ACN’s state court action does not sufficiently “relate to” an arbitration agreement to
14 confer this court with removal jurisdiction under section 205 of the FAA.

15 Because this Court does not have removal jurisdiction under section 205,
16 Defendants’ reliance upon *Day v. Orrick, Herrington & Sutcliffe*, LLP, 42 F.4th 1131,
17 1138 (9th Cir. 2022) to establish subject matter jurisdiction under section 203 is
18 similarly unavailing. *See* Remand Opposition at 9-10 (urging this Court to interpret
19 *Day v. Orrick* to mean that as long as this Court has removal jurisdiction over ACN’s
20 state court action under section 205, then it can also assume subject matter jurisdiction
21 over that action under section 203).

22 **C. This Court Does Not Have Federal Question Jurisdiction Under**
23 **Federal Admiralty Laws.**

24 ACN’s Remand Motion explained that this Court does not have admiralty
25 jurisdiction over ACN’s state court action pursuant to 28 U.S.C. § 1333(1) because
26 Defendants cannot satisfy *both* the “location test” and “connection test” set forth by the
27 Supreme Court in *Grubart*, 513 U.S. at 534, which was reiterated by the Ninth Circuit
28 in *Gruver v. Lesman Fisheries Inc.*, 489 F.3d 978, 982 (9th Cir. 2007). More

1 specifically, Defendants fail to satisfy the location test, as an initial matter, because
2 none of the allegations in ACN’s state court case concern any cause of action or other
3 factual event that occurred on “navigable water.” *Gruver*, 489 F.3d at 982; *see* FAC.
4 Defendants fail to meaningfully rebut that critical fact.

5 *First*, Defendants simply ignore the location and connection tests altogether, and
6 attempt to argue that this Court may exercise admiralty jurisdiction pursuant to 28
7 U.S.C. § 1333(1) because “[a]dmiralty jurisdiction extends to claims that arise from” a
8 contract that “is maritime in nature[,]” “Charter [agreements] [are] clearly maritime in
9 nature,” and “since Plaintiff’s claims directly relate to [the] Charter [Agreements],
10 jurisdiction is proper.” Remand Opposition at 11. But the only authority that
11 Defendants cite to support that erroneous legal standard is a morass of inapposite case
12 law. All of the cases that Defendants rely upon predate *Grubart* (in one instance by
13 more than 75 years). *See id.* A number of cases were also decided by courts in
14 jurisdictions outside of the Ninth Circuit. *See id.* None of these cases have any
15 precedential value to this proceeding. Thus, the legal standard for establishing
16 admiralty jurisdiction remains the standard set forth in *Grubart*: a Court does not have
17 admiralty jurisdiction over a proceeding unless both the “location test” and
18 “connection test” are satisfied.

19 *Second*, Defendants strain mightily to argue that ACN’s case somehow concerns
20 “navigable waters,” thereby satisfying *Grubart*’s “location test.” But here again,
21 Defendants’ assertions have zero basis in law or fact. To start, Defendants’ entire
22 argument revolves around a prolonged discussion of the facts and holding in
23 *Commerzbank Aktiengesellschaft v. M/V UTOPIE*, 2014 WL 1572438, at *4 (E.D. La.
24 Apr. 17, 2014), a case decided by a federal district court in Louisiana that has no
25 bearing on this proceeding. However, even setting jurisdictional issues aside,
26 *Commerzbank* is inapposite to this case because it does not even stand for the
27 proposition for which Defendants have cited it. Defendants rely on *Commerzbank* to
28 argue that ACN’s purported “refusal to perform its voyages on navigable waters”

1 somehow, nevertheless, constitutes a tort that occurred “on navigable waters.”
2 Remand Opposition at 12-13. That is entirely unlike the tort at issue in *Commerzbank*,
3 which involved a purportedly unlawful *arrest of a ship* on the *Mississippi River*—i.e. a
4 tort that undoubtedly occurred on navigable waters. At any rate, Defendants also
5 mischaracterize the nature of ACN’s state court action. ACN’s FAC seeks to hold
6 Defendants accountable for their unlawful business practices and false advertising in
7 violation of California’s unfair competition laws. Unlike *Commerzbank*, those claims
8 do not involve any facts that occurred on navigable waters.

9 *Third*, Defendants argue that the location test is satisfied because ACN’s state
10 court action involves “an injury suffered on land [that] was caused by a vessel on
11 navigable water.” It does not. Again, ACN was harmed by Defendants’ unlawful
12 business practices and false advertising—not by Defendants’ wood chip shipping
13 vessels.

14 Because Defendants have not satisfied *Grubart*’s “location test,” this Court does
15 not have admiralty jurisdiction over ACN’s state court action. *See Grubart*, 513 U.S.
16 at 534.

17 **D. Defendants Have Not Met Their Burden of Proving Diversity**
18 **Jurisdiction.**

19 Because “it is not facially evident [in the FAC] that more than \$75,000 is in
20 controversy,” *Matheson v. Progressive Specialty Ins. Co.*, 319 F.3d 1089, 1091 (9th
21 Cir. 2003), Defendants bear the burden of proving “by a preponderance of the
22 evidence” that the \$75,000 threshold has been met for purposes of diversity
23 jurisdiction. In order to meet that burden, Defendants were required to set forth, “in
24 the removal petition itself, the underlying facts supporting its assertion that the amount
25 in controversy exceeds [\$75,000].” *Gaus v. Miles, Inc.*, 980 F.2d 564, 567 (9th Cir.
26 1992); *Matheson*, 319 F.3d at 1090; *Guglielmino v. McKee Foods Corp.*, 506 F.3d
27 696, 699 (9th Cir. 2007); *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 404 (9th
28 Cir. 1996).

1 Defendants failed to meet that burden in their removal petition, and still fail to
2 meet that burden now. Although Defendants readily concede that ACN “never
3 specifies the exact amount of damages it is seeking in the [FAC’s] Prayer for Relief,”
4 Defendants argue that the amount in controversy can nevertheless be inferred based on
5 a “reasonable reading” of the FAC’s allegations. Remand Opposition at 14. But doing
6 so does not come close to satisfying the “preponderance of the evidence” standard,
7 which requires that Defendants “actually prov[e] the facts to support jurisdiction,
8 including the jurisdictional amount.” *Gaus*, 980 F.2d at 567.

9 At any rate, the amount in controversy cannot be inferred based on any reading
10 of the FAC’s allegations. For example, Defendants repeatedly point to allegations in
11 the FAC stating that Defendants charged ACN \$45 million to charter Defendants’
12 wood chip vessels. Remand Opposition at 14. But the amount that Defendants
13 charged provides no indication of what ACN ultimately *paid* to Defendants, or the
14 total amount of Defendants’ unlawful gain—both necessary facts for determining the
15 amount of restitution and unjust enrichment damages, and ultimately the amount in
16 controversy. Because Defendants have not met their burden of proving that the
17 amount in controversy exceeds \$75,000 pursuant to 28 U.S.C. § 1332(a), this Court
18 does not have diversity jurisdiction over ACN’s state court action.

19 **E. ACN Should Be Granted Leave to Permissively Join ACN Hong**
20 **Kong as a Plaintiff.**

21 The permissive joinder provision of Rule 20(a)(1) of the Federal Rules of
22 Procedure allows the joinder of plaintiffs to an action if: “(A) they assert any right to
23 relief jointly, severally, or in the alternative with respect to or arising out of the same
24 transaction, occurrence, or series of transactions or occurrences; and (B) any question
25 of law or fact common to all plaintiffs will arise in the action.” Fed. R. Civ. P.
26 20(a)(1).

27 ACN respectfully requests leave pursuant to Rule 20(a)(1) to permissively join
28 its affiliate, Hong Kong Chung Nam Trading Co. Limited (“ACN Hong Kong”) as a

1 plaintiff in this proceeding. ACN appointed ACN Hong Kong as ACN’s agent under
2 the Charter Agreements, and therefore, Defendants’ unfair and fraudulent business
3 practices were directed to both ACN and ACN Hong Kong. *See* Ikehasi Decl., Ex. B
4 ¶¶ 70-71. Therefore, ACN Hong Kong’s right to relief is asserted “with respect to or
5 arising out of the same transaction, occurrence, or series of transactions or
6 occurrences” as ACN, and there are “question[s] of law or fact” common to both
7 parties. Fed. R. Civ. P. 20(a)(1). Joinder of ACN Hong Kong is therefore proper and
8 warranted pursuant to the requirements of Fed. R. Civ. P. 20(a)(1).

9 Should ACN be granted leave to join ACN Hong Kong—an entity incorporated
10 in and located outside of the United States—as a plaintiff in this proceeding, then any
11 supposed diversity jurisdiction between the parties would be destroyed given that both
12 plaintiffs and defendants would include at least one non-U.S. party. *See* Remand
13 Opposition at 6 (representing that both Defendants’ MOL Drybulk Ltd. and Mitsui
14 O.S.K. Lines, Ltd. are Japanese companies); *Faysound Ltd. v. United Coconut Chems.*,
15 878 F.2d 290, 294 (9th Cir. 1989) (“Diversity jurisdiction does not encompass foreign
16 plaintiffs suing foreign defendants.”) (citation omitted); *Nike, Inc. v. Comercial Iberica*
17 *de Exclusivas Deportivas, S.A.*, 20 F.3d 987, 990–91 (9th Cir. 1994) (one United States
18 citizen plaintiff or defendant will not establish diversity if there is a foreign plaintiff
19 and a foreign defendant). Therefore, to the extent that diversity serves as the only
20 basis for this Court’s subject matter jurisdiction over this proceeding, then remand of
21 this case would be warranted following the joinder of ACN Hong Kong.

22 **F. All of the Younger Abstention Factors Have Been Met.**

23 Defendants’ Remand Opposition musters a litany of objections as to why the
24 *Younger* abstention doctrine should not apply to dismiss Defendants’ federally
25 removed action. None of those arguments hold water.

26 As an initial matter, Defendants take issue with the four-prong *Younger*
27 abstention test that ACN applied in its Remand Motion, which is: “(1) a state-initiated
28 proceeding is ongoing; (2) the proceeding implicates important state interests; (3) the

1 federal plaintiff is not barred from litigating federal constitutional issues in the state
2 proceeding; and (4) the federal court action would enjoin the [state court] proceeding
3 or have the practical effect of doing so, *i.e.*, would interfere with the state proceeding
4 in a way that *Younger* disapproves.” *San Jose Silicon Valley Chamber of Commerce*
5 *Political Action Committee v. City of San Jose*, 546 F.3d 1087, 1092 (9th Cir. 2008).
6 According to Defendants, *San Jose* is no longer “good law” because that case was
7 abrogated. Remand Opposition at 20. That is incorrect. In fact, the Ninth Circuit has
8 applied the *San Jose* four-factor *Younger* test as recently as 2017. *Williams v. King*,
9 696 F.App’x 283, 284 (9th Cir. 2017).

10 Defendants’ arguments with respect to each these *Younger* factors are similarly
11 unavailing.

12 **1. ACN’s State Court Action Is Ongoing.**

13 The first prong of the *Younger* test is easily met because ACN filed its state
14 court action “before any proceedings of substance on the merits ha[d] taken place” in
15 Defendants’ federally removed action. *M & A Gabae v. Cmty. Redevelopment*
16 *Agency*, 419 F.3d 1036, 1040 (9th Cir. 2005) (quoting *Haw. Hous. Auth. v. Midkiff*,
17 467 U.S. 229, 238 (1984)) (emphasis omitted). Unable to rebut this undisputed fact,
18 Defendants insist that this Court can, and should, simply disregard this factor
19 altogether. See Remand Opposition at 17 (“the analysis of this prong has no effect,”
20 and therefore “[t]his prong is not met”). Of course, Defendants’ apparent
21 dissatisfaction with *Younger*’s legal standard is not a legitimate basis for the Court to
22 find that this factor does not apply here. It does, and ACN’s Remand Motion
23 sufficiently demonstrates why that factor has been met.

24 Defendants’ second attempt at defeating this factor fares no better than its first.
25 Defendants argue that this factor has not been met because ACN’s Remand Motion
26 cited to *M&A Gabae v. Cmty. Redevelopment Agency of City of Los Angeles*, 419
27 F.3d 1036 (9th Cir. 2005), which “did not concern removal.” Remand Opposition at
28 17. But whether or not *M&A Gabae* concerns removal is entirely irrelevant to an

1 analysis under the first factor, which remains the same regardless of whether a case
2 involves removal or not, and simply asks whether the state court action at issue was
3 filed “before any proceedings of substance on the merits ha[d] taken place” in the
4 federally removed action. *See M&A Gabae*, 419 F.3d at 1036.

5 **2. ACN’s State Court Action Implicates Important State Interests,**
6 **and Defendants Are Not Barred From Litigating Federal**
7 **Claims in That Action.**

8 ACN’s state court action satisfies the second and third *Younger* abstention
9 factors. To start, ACN’s lawsuit against Defendants directly implicates important
10 California state interests. That is because ACN’s state court action seeks to protect
11 California residents from Defendants’ unfair and unlawful business practices, and from
12 fraudulent advertising. Remand Motion at 11-12. ACN is seeking public injunctive
13 relief to enjoin Defendants from further engaging in these practices towards the public
14 as a whole, and not just towards ACN. *Id.* This is exactly the type of state interest that
15 Courts have repeatedly held falls under the third factor of the *Younger* test. *See*
16 *Monster Beverage Corp. v. Herrera*, 650 F. App’x 344, 346 (9th Cir. 2016);
17 *Commuc’ns Telesystems Intern. v. Cal. Public Util. Comm’n*, 196 F.3d 1011, 1017 (9th
18 Cir. 1999); *Meredith v. Oregon*, 321 F.3d 807, 818 (9th Cir. 2003).

19 Defendants do not dispute that protecting consumers from unfair, unlawful and
20 fraudulent business practices constitutes an important state interest. Instead, their
21 primary objection is that ACN’s state court action benefits only ACN (which,
22 Defendants point out is a “private party affiliated with non-U.S. entities”). That
23 argument is meritless because it ignores the fact that ACN is seeking public injunctive
24 relief.

25 Defendants also argue that this factor has not been met because there is a
26 competing federal interest, which Defendants characterize as the “uniquely federal
27 interest in ensuring that the United States satisfies its treaty obligations by providing
28 such enforcement.” Remand Opposition at 19. But Defendants fail to cite to any

1 authority to support the proposition that Courts must conduct a balancing analysis
2 between purportedly competing state and federal interests when determining whether
3 the third *Younger* factor has been satisfied.

4 Regardless, there is no competing “uniquely federal interest” here. Defendants
5 can bring their motion to compel arbitration in a California state court, where
6 Defendants’ FAA-related claims would apply with equal force as they do in federal
7 court. *See Lamps Plus, Inc. v. Varela*, 139 S.Ct. 1407 (2019) (“state law is preempted
8 to the extent it stands as an obstacle to the accomplishment and execution of the full
9 purposes and objectives” of the FAA (internal quotation marks omitted)); *Vaden v.*
10 *Discover Bank*, 556 U.S. 49, 59 (2009) (“Agreements to arbitrate that fall within the
11 scope and coverage of the [FAA] must be enforced in state and federal courts. State
12 courts . . . have a prominent role to play as enforcers of agreements to arbitrate.”). The
13 same holds true for any other federal legal challenge that Defendants may wish to
14 bring in the state court action. *See Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 15 (1987).
15 Defendants bear the burden of “show[ing] that state procedural law bar[s] presentation
16 of [their] claims.” *Id.* at 14. Defendants have not met that burden. Therefore, this case
17 satisfies the third *Younger* abstention factor.

18 **3. Defendants’ Federal Action Seeks to Interfere With ACN’s**
19 **Ongoing State Court Action.**

20 ACN’s Remand Motion asserts that Defendants’ federally-removed action
21 impermissibly interferes with ACN’s ongoing state court action because Defendants
22 have requested that this Court either enjoin or altogether dismiss that action. Remand
23 Motion at 12. ACN’s Remand Motion further states that the situation before the Court
24 here is the quintessential type of interference that *Younger* prohibits. *Id.* (citing *San*
25 *Jose*, 546 F.3d at 1095).

26 Defendants’ primary objection here is that *San Jose* is inapplicable because it
27 “does not . . . involve a motion to dismiss or compel arbitration.” Remand Opposition
28 at 20. That argument misses the point entirely. Like *San Jose*, the Defendants here

1 have requested that a federal court either dismiss or enjoin ACN's ongoing state court
2 action. That is all that the fourth factor of the *Younger* test requires, and that factor is
3 readily met here.

4 **III. CONCLUSION**

5 For the reasons stated herein and in ACN's Remand Motion, this Court should
6 grant ACN's motion and remand this case back to its proper forum in Los Angeles
7 Superior Court.

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9 Dated: Novemer 17, 2023

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